

1           (Whereupon, the aforementioned  
2           document was marked for  
3           identification as Enterprises  
4           Exhibit Number ENT-192.)

5           MR. SCHMIDT:  If I may approach,  
6   Your Honor?

7           BY MR. SCHMIDT:

8           Q       I have marked for identification  
9   in paper form the same chart that appears up  
10  on the board as ENT-192.  Is this a chart that  
11  was prepared at your direction?

12          A       Yes, it was.

13          Q       Can you tell us what data is  
14  reflected?  Does this derive from data in your  
15  written testimony?

16          A       Yes.  And I believe that the data  
17  when it was originally presented was in  
18  tabular form.  It showed up in a table.  In  
19  this the only difference here is that it's now  
20  showing up in graphical form.

21          Q       And what does this data show?  
22  What is reflected in this data?  What does it

1 capture?

2 A Right. So recall that I said that  
3 we begin with 240 contracts in a database  
4 between NFL and MVPDs. What we did, instead  
5 of going through all 240, we sorted them in  
6 terms of the biggest to the smallest,  
7 starting, I believe, with DirecTV. And then  
8 we moved down.

9 And after we had gotten through 9  
10 contracts -- and these are the 9 MVPDs whose  
11 contracts we studied -- we were able to  
12 account for roughly 95 percent of all of NFL  
13 Network's national subscribers.

14 What these numbers indicate is  
15 what is referred to as the net effective rate  
16 paid by that MVPD to NFL Network in 2008.

17 Q So, for example, what did Blue  
18 Ridge pay in 2008?

19 A Blue Ridge -- and I just want to  
20 -- I want to consult. Instead of eyeballing  
21 it, I want to get it off my report. I recall  
22 [REDACTED] but bear with me. Sorry.

1 Right. Blue Ridge paid NFL  
2 Network on net [REDACTED] per subscriber per month  
3 to NFL Network in 2008.

4 Q Fair market transaction?

5 A Absolutely. It was a voluntary  
6 transaction between a willing buyer and a  
7 willing seller.

8 Q Let me just take a step back. The  
9 blue lines are actual contract prices from the  
10 largest MVPDs that collectively carry 95  
11 percent of the NFL Network subscribers?

12 A That is correct.

13 Q What is the green line, "Simple  
14 Average"?

15 A It's exactly that. It's that if  
16 you take the 9 observations in 2008 and just  
17 take a simple average, you would get [REDACTED]  
18 per subscriber per month.

19 Q And that was not what you offered  
20 as price for Comcast, was it? It's predicted  
21 price for Comcast?

22 A No, it was not. My fair market

1 valuation for what Comcast should pay --  
2 again, conditional on a finding of  
3 discrimination and conditional finding of  
4 impairment of arrival -- is roughly [REDACTED]  
5 below the average, the simple average, among  
6 the 9 largest MVPDs who carry NFL Network.

7 Q Why is that?

8 A Well, it's because Comcast is  
9 special. And so what I mean by that is that  
10 our database allows us to look beyond the  
11 averages. Okay?

12 So if you knew nothing about Blue  
13 Ridge, RCN, or AT&T and all you knew what it  
14 was paying NFL, the best measure of the fair  
15 market value would be the average. And,  
16 indeed, that is what regression analysis  
17 begins with.

18 It begins with the [REDACTED] And  
19 then what it does is it says, if I look at  
20 other attributes, say, for example, how many  
21 subscribers the MVPD shows NFL Network, is it  
22 possible that I can start to explain these

1 variations that we are observing?

2                   You see the high end is Blue Ridge  
3 at [REDACTED] per subscriber month. And it goes  
4 all the way down to DISH Network. I have to  
5 consult my table. It's somewhere between [REDACTED]  
6 [REDACTED] per month.

7                   And so what the regression  
8 analysis is attempting to do is can we  
9 identify any attributes of the carriers of the  
10 MVPDs that allow us to explain that variation?

11           Q       What is the existing Comcast  
12 price?

13           A       Okay. The very bottom bar that  
14 shows up in yellow, existing contract price,  
15 is the price that actually appears in the NFL  
16 Comcast agreement that was signed in 2004 for  
17 carriage on Comcast's expanded basic tier.

18           Q       Now, has Comcast ever priced that  
19 low?

20           A       No, they haven't because they  
21 never carry it on the expanded basic tier.

22           Q       Can you explain how that works?

1           A       For each tier in the contract --  
2   and this is based on an economist's reading of  
3   the contract, mind you -- there is a different  
4   price. So there is a price for D2 carriage.  
5   There is a price -- which they did carry it  
6   for a while. There is a price for expanded  
7   basic. And there is a price for the sports  
8   tier.

9                   And so we don't have to go by  
10   memory, Your Honor, I have all those three  
11   prices from the contract in my report.

12           Q       And you do, in fact, have a D2  
13   price in your report?

14           A       Yes, I do.

15           Q       Okay. Let me ask you just one  
16   other question. And maybe Mr. Burke can  
17   extend me a courtesy. If I understand Mr.  
18   Carroll, that board over there is the table  
19   that was shown to Mr. Hawkins from that slide.

20                   MR. SCHMIDT: May I just use that,  
21   instead of fishing out the exhibit, just for  
22   ease? Do you mind just popping that up there

1 for a minute? Can you flip it around there so  
2 I can just see if that was what I was thinking  
3 of? Okay. That is the one I was thinking of.

4 If I may just stand so I can see  
5 it, Your Honor?

6 BY MR. SCHMIDT:

7 Q Do you recall Mr. Hawkins about  
8 being asked about this testimony --

9 A Yes, I do.

10 Q -- about this table -- I'm sorry  
11 -- and the three columns in the table?

12 A Yes, I do.

13 Q Under your predicted price, which  
14 you understand to be the price the NFL Network  
15 is seeking in this litigation, which one of  
16 those three columns?

17 A It would be in the second column.

18 Q Okay. And, just as a factual  
19 matter, do you know where Versus' actual price  
20 and Golf Channel's actual price falls  
21 currently among those three columns?

22 A It falls in the same column, the

1 second column.

2 MR. SCHMIDT: You can take that  
3 down now. Nature is going to help you. Matt,  
4 you can take that down. Take those away.  
5 Thank you.

6 BY MR. SCHMIDT:

7 Q I would like to show you one more  
8 thing. Did you make an estimate of how to  
9 count for growth in your predicted price into  
10 the future?

11 A Yes, I did.

12 Q Okay. What I would like to mark  
13 for --

14 JUDGE SIPPEL: Let's finish this  
15 one. Exhibit 192 is marked for  
16 identification. Do you want to move that into  
17 evidence?

18 MR. SCHMIDT: I would, Your Honor.  
19 Thank you for the reminder.

20 JUDGE SIPPEL: Any objection?

21 MR. BURKE: No, Your Honor.

22 JUDGE SIPPEL: Received in



1 evidence as Enterprises exhibit 192.

2 (Whereupon, the aforementioned  
3 document, having previously been  
4 marked for identification as  
5 Enterprises Exhibit Number  
6 ENT-192, was received in  
7 evidence.)

8 BY MR. SCHMIDT:

9 Q The last one, I promise. I have  
10 marked for identification ENT-193, my final  
11 table.

12 MR. SCHMIDT: If I may approach?

13 JUDGE SIPPEL: Sure.

14 MR. SCHMIDT: Thank you.

15 BY MR. SCHMIDT:

16 Q Did you generate the table that I  
17 have marked for identification as ENT-193?

18 A Yes, I have.

19 Q And can you tell us what this  
20 shows?

21 A It shows how I grew the 2008  
22 predicted rates through 2012. And it's quite

1     simple. I just grew it at the average rate of  
2     growth of all other MVPDs for which I had data  
3     in those years.

4           Q     And, just to be absolutely clear  
5     on this one, do you have an analog of this  
6     table in your direct testimony, your written  
7     direct testimony?

8           A     Yes, I do.

9           Q     Are the numbers in it different?

10          A     The numbers are different.

11          Q     Is that because new information  
12     has become available to you since the date you  
13     submitted your written testimony?

14          A     Yes, it has.

15          Q     What is that new information?

16          A     Since I submitted my written  
17     testimony, I have been provided two new  
18     contracts, an NFL DISH Network contract and an  
19     NFL DirectTV contract, that had the effect of  
20     changing some of the rates in certain years.

21                     And, just to be precise, the DISH  
22     Network contract changed Dish's rates for

1 2009, 2010, 2011, and 2012. And the DirecTV  
2 new contract changed DirecTV's rate for 2012  
3 only.

4 So that forced me to go back and  
5 recalculate this average year over year growth  
6 rate and in a way that I might add is highly  
7 favorable to Comcast relative to what appears  
8 in my written testimony.

9 Q It lowers the growth rate?

10 A Significantly.

11 Q Do you stand by your testimony in  
12 your written testimony on the future growth  
13 rate based on the data that was available to  
14 you at the time you gave that testimony?

15 A Oh, absolutely. It was the best  
16 that I could do conditional on having that  
17 data.

18 Q And, based on the data you now  
19 have available to you, do you stand by what we  
20 have marked for identification as ENT-193?

21 A Yeah. Well, the thing that I care  
22 about as an economist is the methodology. And

1 I believe the methodology was correct.

2 Q Not changed?

3 A The methodology is not changed.

4 We're just putting in new data. And it's  
5 spitting out smaller growth rates.

6 MR. SCHMIDT: Your Honor, at this  
7 point I would like to move this into evidence  
8 as ENT-193.

9 JUDGE SIPPEL: Okay. It's  
10 identified as Enterprises exhibit number 193.  
11 Is there any objection?

12 MR. BURKE: No, Your Honor.

13 JUDGE SIPPEL: It's received in  
14 evidence as Enterprises exhibit number 193.

15 (Whereupon, the aforementioned  
16 document, having previously been  
17 marked for identification as  
18 Enterprises Exhibit Number  
19 ENT-193, was received in  
20 evidence.)

21 BY MR. SCHMIDT:

22 Q Let's return, Dr. Singer, if you

1 wouldn't mind, to the chart where you graphed  
2 out how much real world MVPDs pay for NFL  
3 Network, which I believe we previously  
4 introduced into evidence as ENT-192. Do you  
5 have that in front of you?

6 A I do now.

7 Q If you compare the predicted price  
8 that you have proposed in this litigation for  
9 Comcast to the real world price that other  
10 MVPDs pay for the NFL Network, where in that  
11 scale does your predicted price fall?

12 A It's near the bottom. In fact,  
13 it's the lowest with the exception of DISH  
14 Network.

15 MR. SCHMIDT: Thank you, Dr.  
16 Singer. That's all my questions for the  
17 introduction.

18 JUDGE SIPPEL: Which one is the  
19 existing contract prices? That's with  
20 Comcast, of course.

21 THE WITNESS: Can you leave that  
22 up, please?

1 JUDGE SIPPEL: Just for the  
2 clarification here, existing Comcast contract  
3 prices, the one that you have got on the  
4 bottom. Is that correct?

5 THE WITNESS: Correct. Your  
6 Honor, my --

7 JUDGE SIPPEL: Then the predicted  
8 price is for whom?

9 THE WITNESS: For Comcast.

10 JUDGE SIPPEL: Also Comcast?

11 THE WITNESS: Yes. If I could  
12 just --

13 JUDGE SIPPEL: Yes. Go ahead. Go  
14 ahead. I'm sorry.

15 THE WITNESS: This is admittedly  
16 hard stuff. Let's see if I can do it justice.  
17 We have a contract that is signed between  
18 Comcast and the NFL Network that stipulates a  
19 price for carriage on the expanded basic tier.

20 So the question is, why am I going  
21 through the exercise of trying to predict a  
22 price based on what other people are paying in

1 light of this contract?

2 And my basis for this, I'm trying  
3 to follow this eight-factor test that the FCC  
4 has given us for what type of evidence should  
5 be used to inform fair market value.

6 And the factor on the top -- it's,  
7 in fact, number one -- says you want to look  
8 at what other parties, third parties, have  
9 paid in voluntary transactions. That's factor  
10 number one. If you can get that, that is the  
11 best you can do.

12 Short of that, there are other  
13 things that you can look at. And somewhere  
14 down the list, I believe it's number four or  
15 number five, says you can look at the contract  
16 but with the caveat that you have to be wary  
17 that if the contract was cut under duress and  
18 the price that comes out of that contract may  
19 be tainted in the direction.

20 In fact, I just would point out  
21 the [REDACTED] that Comcast was able to extract  
22 is certainly below what everyone else was

1 paying in 2008, and it's below what my best  
2 estimate is of what Comcast should pay. And  
3 to me this reflects that Comcast was able to  
4 exert a certain amount of market power to  
5 extract it below market rate.

6 JUDGE SIPPEL: So that's a [REDACTED]  
7 price? The existing Comcast contract price is  
8 54 cents?

9 THE WITNESS: Correct.

10 JUDGE SIPPEL: Okay.

11 THE WITNESS: Correct. And so --

12 JUDGE SIPPEL: I am trying to read  
13 this.

14 THE WITNESS: I am offering that  
15 purely as corroboration of my best prediction  
16 based on what other MVPDs have voluntarily  
17 paid Comcast. This is consistent with the  
18 first item of the eight factors that the FCC  
19 gives for what evidence should be considered  
20 when estimating fair market value.

21 JUDGE SIPPEL: Thank you.

22 THE WITNESS: Sure.



1 JUDGE SIPPEL: Okay. Does that  
2 conclude direct, then?

3 MR. SCHMIDT: Yes, it does, Your  
4 Honor.

5 JUDGE SIPPEL: Then you're  
6 tendering him for cross-examination at this  
7 time?

8 MR. SCHMIDT: Yes, Your Honor.

9 JUDGE SIPPEL: Mr. Burke, your  
10 witness.

11 MR. BURKE: Thank you, Your Honor.

12 Good afternoon, Dr. Singer.

13 THE WITNESS: Good afternoon.

14 MR. BURKE: My name is Arthur  
15 Burke, and I represent Comcast.

16 CROSS-EXAMINATION

17 BY MR. BURKE:

18 Q Just to clean up a few sort of  
19 housekeeping issues at the outset, you gave us  
20 some testimony about the MASN decision. Do  
21 you recall that?

22 A Yes, I do.

1 Q That's an M-A-S-N decision?

2 A It stands for Mid-Atlantic Sports  
3 Network, yes.

4 Q I think you offered us some  
5 testimony about what the FCC's decision is,  
6 what the ruling of the FCC was in that  
7 decision. Is that right?

8 A Yes, I did. With respect to the  
9 conditions of merger approval and how that  
10 impacted the negotiations between Comcast and  
11 MASN, within a few weeks of that order, a deal  
12 was struck that wouldn't have otherwise been  
13 struck without the order.

14 Q We heard the testimony the first  
15 time. Dr. Singer, if you could just answer my  
16 question?

17 You mentioned a two-phase test.  
18 Do you recall that in your testimony?

19 A Phase one and phase two, yes.

20 Q Right. And that came from the  
21 MASN decision, that phase one and two  
22 approach, didn't it?

1           A       I'm not positive it came from the  
2    MASN decision.  What I can tell you is that  
3    that was used in the TCRB-Time Warner case  
4    that I was involved in.

5                    It was phase one testimony, which,  
6    by the way, I did not offer testimony in phase  
7    one there.  And then I offered testimony in  
8    what was called phase two there.

9           Q       I guess what I am trying to get  
10   at, Dr. Singer, is, are you an attorney?

11          A       No, I am not.

12          Q       You are a Ph.D. economist, right?

13          A       Correct.

14          Q       Are you here to offer legal  
15   opinions about what the FCC's standards are?

16          A       Certainly not offering legal  
17   opinions, but the fact that I have been  
18   through two very important carriage disputes  
19   to me implies that I have been through this,  
20   I know how the process works, and I think that  
21   I have something to say about that process.

22          Q       So you are here to offer expert

1 testimony about the legal standards of the  
2 SEC?

3 A No. I think I just said I wasn't  
4 going to offer legal standards.

5 MR. BURKE: I would move to strike  
6 the witness' testimony concerning what the  
7 appropriate standards are. That is a legal  
8 question to which he is not qualified to  
9 testify.

10 MR. SCHMIDT: And we would  
11 objection. to that, Your Honor. The witness  
12 testified that he had a factual basis from his  
13 direct involvement in these cases. It came up  
14 in the course of him answering a question.

15 He explained his understanding of  
16 what the structure is. I think a witness in  
17 this context is entitled to say, "This is my  
18 understanding of what the structure I'm  
19 operating in is, including based on experience  
20 I have had where my testimony has been cited  
21 by the FCC."

22 MR. BURKE: Your Honor, that would

1 be like a witness saying, an expert witness  
2 saying, I testified in another case and the  
3 judge said X, Y, Z. And I'm going to get  
4 testimony about what the legal standard is  
5 based on the judge's rulings.

6 That is not an appropriate  
7 position for an expert economist to be giving  
8 testimony on.

9 MR. SCHMIDT: An expert is  
10 entitled to say "This is why I did what I  
11 did." And that's what he said and "It's based  
12 on the experience that I had."

13 MR. BURKE: I would note -- I'm  
14 sorry. That said, it is not dispositive. It  
15 is already appealed to the full Commission.  
16 And I am sure it will be appealed to the D.C.  
17 Circuit after that.

18 So I don't think it has any  
19 significance for this Court except whatever  
20 significance the Court, yourself, wants to  
21 give it.

22 But we certainly don't think that

1     that is the governing standard here.

2                 MR. SCHMIDT:  And that's fair.  We  
3     don't need this witness to tell us that that  
4     is the government standard.  He's not doing  
5     that.  He's saying, "This is what I am  
6     familiar with.  This is how I structured my  
7     testimony.  And this is why I structured my  
8     testimony."  We can resolve down the road  
9     whether that's --

10                JUDGE SIPPEL:  Okay.  I'm going to  
11     partially grant the relief Mr. Burke is asking  
12     in the sense that I won't accept it as expert  
13     testimony.  But he is a fact witness to that  
14     case, at least for purpose of familiarity.

15                And I might have been one of the  
16     ones that instituted him answering those  
17     questions.  I was trying to get a focus on  
18     what the case was and what it was about.  I  
19     didn't mean him to go as far as he went.

20                I am receiving his testimony for  
21     purposes of identifying the case and what the  
22     case was about, not for the efficacy of any

1 conclusion that he is testifying to.


2 MR. BURKE: Thank you, Your Honor.

3 That's all we need, Your Honor.

4 JUDGE SIPPEL: So let's move  
5 forward, then.

6 BY MR. BURKE:

7 Q Just one quick question for you,  
8 Dr. Singer, based upon this chart, which is  
9 NFL Enterprises exhibit 192. An item here, we  
10 had the DirectTV price, which looked to be in  
11 the low 60 cents. Is that right?

12 A By eyeball, it looks to be in the  
13  correct.

14 Q And so now DirectTV accounts for  
15 about half of the subscribers in the sample,  
16 doesn't it?

17 A I don't have that number handy.  
18 So I can't confirm or deny it.

19 Q It's really, by far, the largest  
20 MVPD that is in the sample, isn't it?

21 A It is the largest.

22 Q I mean, it's actually dozens and

1 dozens times larger than, say, Blue Ridge, for  
2 example, right?

3 A It is. And that's why I stopped  
4 at Blue Ridge. I kept going from the largest  
5 to the smallest until I exhausted 95 percent  
6 of -- by definition, I was going to have some  
7 of my sample that was much smaller than  
8 DirecTV.

9 Q So if we were to conclude that  
10 DirecTV's price was not a reliable price and  
11 essentially a fictional price, that would have  
12 a big impact on your analysis, wouldn't it?

13 A Well, I can't accept that  
14 conclusion. It's a market transaction between  
15 a voluntary buyer and a voluntary seller.

16 Q Well, I am not asking you to  
17 accept a factual representation. I am asking  
18 you as an expert to consider a hypothetical.

19 If we determine that DirecTV's  
20 price is not a reliable real price, then that  
21 would render this entire analysis unreliable.  
22 Isn't that right?



1           A       If we made hat horrendous  
2   uneconomic assumption, we would have to -- we  
3   would lose that data point.  What we would do,  
4   instead, is go down to someone below Blue  
5   Ridge who would have an even higher price.

6                   And so my fair market value  
7   estimation would be even higher than the one  
8   that I have offered.

9           Q       So the answer is yes.  You would  
10   render this unreliable?

11          A       No, no.

12                   MR. SCHMIDT:  Objection.

13                   THE WITNESS:  No, it's not.  And I  
14   think that's a gross mischaracterization of  
15   what I just said.

16                   BY MR. BURKE:

17          Q       So if you took DirecTV out, it  
18   would not render your conclusions thus far  
19   unreliable?

20          A       No, it would not.

21          Q       With respect to the number that  
22   you calculated or the correct market price, it

1 wouldn't change that?

2           A       It would move the needle, but it  
3 would move it against your favor. It would  
4 move it against the interest of your client.  
5 We put in a smaller MVPD with a higher price.  
6 And that would pull the average up.

7                   And this is my attempt to come up  
8 with the best estimate of the fair market  
9 value that Comcast should pay.

10           Q       Is it any surprise that the  
11 predicted price here comes out almost exactly  
12 directly as identical to the DirecTV price  
13 since they're the largest MVPD by far on this  
14 list?

15           A       It's not a big surprise. In fact,  
16 I controlled for size. So this is what a  
17 regression does. It tries to find the person,  
18 the MVPD, in the sample who is closest to the  
19 person you are trying to predict for.

20                   So the fact that it comes out in  
21 between DirecTV and Dish corresponds perfectly  
22 to my expectation.